

Agenda Item Form

Agenda Date: 07/07/04

Districts Affected: 8 5

Dept. Head/Contact Information: Pat Adauto, Deputy CAO, B & PS; 541-4853

Type of Agenda Item:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☒ Other Source: 2003 CO's

Legal:

☐ Legal Review Required
Denied

Attorney Assigned (please scroll down): Terri Cullen-Garney

☐ Approved ☐

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

Transportation project/ROW requirements

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

Statutory or Citizen Concerns:

Departmental Concerns:

CITY OF PORTLAND
2004 JUL 7 PM 2:53

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a Contract of Sale between the CITY OF EL PASO and JNC DEVELOPMENT, INC. for the purchase of

Parcel No. 8 - 0.441 acres of land, more or less, being a portion of Lot 1, Block 2, of Hueco View Acres, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 4, Page 41, of the Plat Records of El Paso County, Texas.

to be used for the Edgemere Extension Project.

ADOPTED this _____ day of _____, 2004.


THE CITY OF EL PASO

Joe Wardy, Mayor

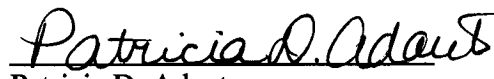
ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:


Theresa Cullen Garney
Deputy City Attorney

APPROVED AS TO CONTENT:


Patricia D. Adauto
Deputy Chief Administrative Officer
for Building and Planning Services

STATE OF TEXAS

§
§
§

CONTRACT OF SALE

COUNTY OF EL PASO

THIS Agreement is entered into this 24th day of June 2004, by and between the CITY OF EL PASO, hereinafter referred to as the "City", and JNC DEVELOPMENT, INC., hereinafter referred to as "Sellers".

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Description of Property. The Sellers hereby agree to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following described real property located in El Paso County, Texas:

Parcel 8—0.441 acres of land, more or less, being a portion of Lot 1, Block 2, of Hueco View Acres, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Volume 4, Page 41, of the Plat Records of El Paso County, Texas, said portion being more particularly described by Metes and Bounds in Exhibit "A" attached hereto and made a part hereof for all purposes.

together with any interest of the Sellers in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property".

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be SIXTEEN THOUSAND THREE HUNDRED AND NO/100THS (\$16,300.00)

2.1 Payment of Sales Price. The full amount of the sales price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Sellers hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1 Title Insurance. Within thirty (30) working days after the date of execution of this contract, the City at its expense will order a title commitment ("commitment"), accompanied by copies of all recorded documents affecting the property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.2 Title Objections. The City will give the Sellers written notice on or before the expiration of ten (10) working days after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. Sellers may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Sellers. The Sellers hereby represent and warrant to the City that to the best of his knowledge, as follows:

4.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. The Sellers warrant that no person or persons own an interest in the fee title in the Property other than the Sellers and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the Sellers' best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the Sellers, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Sellers' actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Sellers.

4.4 Litigation. To the best knowledge of the Sellers, there is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or property.

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance Law. To the best of the Sellers' knowledge, all laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property, have been complied with.

4.7 Taxes. To the best of the Sellers' knowledge, no state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment.

4.8 Pre-Closing Claims. The Sellers agree that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Sellers in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Sellers. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Sellers agree to indemnify and hold the City harmless from and against any losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

4.9 Authority. The Sellers have full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Sellers have good and marketable title to an indefeasible fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Sellers shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the City.

4.12 Misrepresentation. The Sellers shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Sellers contained in this document, or (ii) any breach or default by the Sellers under any of the covenants or agreements contained in this document, or (iii) any breach or default by the Sellers under any of the covenants or agreements contained in this document to be performed by the Sellers, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Sellers made in this document shall survive the execution and delivery hereof and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Lone Star Title Company, 500 North Mesa, El Paso, Texas 79901.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing.

5.2 Real Property Taxes. Real property taxes and assessments shall be prorated at Closing, effective as of the date of Closing, based upon the latest tax bill available. Taxes shall be prorated in accordance with the foregoing provision and the parties shall appropriately and promptly adjust such pro-rations on the basis of the correct, applicable tax bill when such tax bill becomes available. Seller will pay ad valorem taxes through the date of Closing.

5.3 Closing Costs.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property City shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Escrow fees, if any, shall be paid by the City.

5.4 Sellers' Obligations. At Closing, the Sellers shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

5.5 Other Obligations. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. Default.

6.1 Breach by Sellers. In the event that Sellers shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.2 Breach by City. In the event that City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except Sellers' default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Sellers' actual damages as a result of such breach by City, Sellers shall have a right to receive the \$100.00, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement,

and Sellers agree to accept and take such cash payment as its total, reasonable damages and relief and as Seller's sole, exclusive remedy hereunder in such event.

7. Miscellaneous.

7.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Sellers: JNC Development, Inc.
c/o Larry A. Baskind
Baskind and Hosford, P.C.
300 E. Main, Suite 908
El Paso, Texas 79901-1379

City: Mayor Joe Wardy
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

8. Entire Agreement/Governing Law. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 Time. Time is of the essence of this Agreement and each and every provision hereof.

8.2 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

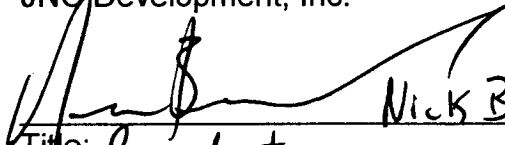
8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller this _____ day of _____, 2004.

JNC Development, Inc.


Title: President Nick Bombach

EXECUTED by the City this _____ day of _____, 2004.

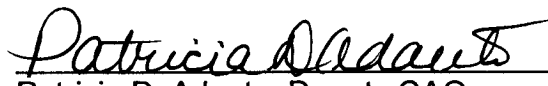
CITY OF EL PASO, a Municipal Corporation

By: _____
Joe Wardy, Mayor

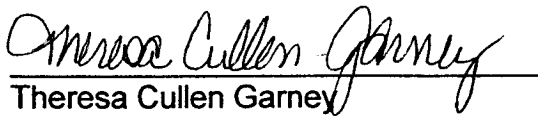
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:


Patricia D. Adauto, Deputy CAO
Building and Planning Services

APPROVED AS TO FORM:


Theresa Cullen Garney
Deputy City Attorney

HUITT-ZOLLARS, INC.

5822 Cromo Drive, Ste. 210

El Paso, Texas, 79912

Phone: (915)587-4339

Fax: (915)587-5247

EXHIBIT "A"**PARCEL EIGHT**

Part of Lot 1, Block 2, Hueco View Acres.

Proposed Right-of-Way for Edgemere

Boulevard, City of El Paso,

El Paso County, Texas

Job No.: 09-0177-03

Field Note Description

All that certain tract or parcel of land for a proposed right-of-way lying within the corporate limits of the City of El Paso, El Paso County, Texas, same being a part of Lot 1, Block 2, Hueco View Acres, an addition to the City of El Paso according to the plat thereof recorded in Volume 4, Page 41, of the Plat Records of El Paso County, Texas, and being out of and a part of that certain tract described in deed to Fernando A. Martinez and Elizabeth C. Martinez Family Trust recorded in Volume 4235, Page 1935, of the Deed Records of El Paso County, Texas, and being more particularly described as follows:

Commencing at a City of El Paso brass cap monument found marking the centerline Intersection of Edgemere Boulevard and War Rose Place; thence with the centerline of Edgemere Boulevard, North 89°56'10" West, 786.35 feet to a point for corner; thence North 00°03'50" East, 30.00 feet to a 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set for the Point of Beginning of this parcel, same being on the existing north right-of-way of Edgemere Boulevard;

Thence with the existing north right-of-way of Edgemere Boulevard, North 89°56'10" West a distance of 614.41 feet to a 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set for the southeast corner of that certain tract described in deed to J.W. Caldwell recorded in Volume 1100, Page 0672, of the Deed Records of El Paso County, Texas;

Thence with west line of the Martinez Tract, North 00°29'22" West, a distance of 30.00 feet to a 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set on

Field Note Description - Page 1 of 2

PARCEL EIGHT

Part of Lot 1, Block 2, Hueco View Acres.

Proposed Right-of-Way for Edgemere

04/08/2004 17:02 915-541-4710

CITY ATTORNEYS OFFICE

PAGE 11/12

1 the proposed north right-of-way of Edgemere Boulevard, a $\frac{5}{8}$ -inch rebar with plastic cap
2 marked "TX4869" found marking the northernmost southeast corner of the Woodcraft Tract,
3 same being the northeast corner of the Hita Tract, bears North $89^{\circ}56'10''$ West, 127.41
4 feet, and North $00^{\circ}29'22''$ West, 88.99 feet;

7 Thence with the proposed north right-of-way, South $89^{\circ}56'10''$ East a distance of 614.41
8 feet to the southwest corner of the beginning of a curve to the left;

10 Thence with the proposed north right-of-way of Edgemere Boulevard and along the arc of a
11 curve to the left having a radius of 25.00 feet, a delta of $90^{\circ}33'12''$, and a chord bearing
12 and distance of North $44^{\circ}47'15''$ East, 35.53 feet, a distance of 39.51 feet to a $\frac{5}{8}$ -inch
13 rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set on the west right-
14 of-way of Harkis Road;

16 Thence with the west right-of-way of Harkis Road, South $00^{\circ}29'22''$ East, a distance of
17 30.00 feet to the beginning of a curve to the right;

19 Thence along the arc of a curve to the right having a radius of 25.00 feet, a delta of
20 $90^{\circ}33'12''$, and a chord bearing and distance of South $44^{\circ}47'15''$ West, 35.53 feet, a
21 distance of 39.51 feet to the Point of Beginning and containing 19,190 square feet or 0.441
22 acres of land.

Dated this 13th Jan, 2004

By:

Michael M. Ivey, RPS
Texas Registration No. 4156

27 Bearings in this description are based on true north as determined by GPS satellite
28 observation on existing city monuments at the intersection of Edgemere and Rising Sun,
29 and Edgemere and War Rose.

30 This description accompanies a plat of survey of even date.

Field Note Description - Page 2 of 2

PARCEL EIGHT

Part of Lot 1, Block 2, Hueco View Acres.

Proposed right of way for Edgemere

LOMA LINDA UNIT 1

LOT 1, BLOCK 2,
HUECO VIEW ACRES

FERNANDO A. MARTINEZ AND
ELIZABETH G. MARTINEZ
FAMILY TRUST
VOL. 4235 PAGE 1935
E.P.C.D.R.

PARCEL EIGHT
19,190 sq. ft.
0.441 acres

J.W.
CALDWELL
1100, PG. 0672
E.P.C.D.R.

10' PUBLIC UTILITY
EASEMENT AS PER PLAT
OF HUECO VIEW ACRES

S 89°56'10" E, 614.41'

N 89°56'10" W, 614.41'

N 00°03'50" E,
30.00'

Existing South Right-of-Way

Proposed South Right-of-Way

INDEPENDENT
L DISTRICT
77, PG. 437
E.P.C.D.R.

SOCORRO INDEPENDENT SCHOOL DISTRICT
VOL. 4078 PAGE 1220
E.P.C.D.R.

SOCORRO INDEPENDENT
SCHOOL DISTRICT
VOL. 4430, PG. 1338
E.P.C.D.R.

LOT 8 BLOCK 7,
HUECO VIEW ACRES

10' PUBLIC UTILITY
EASEMENT AS PER PLAT
OF HUECO VIEW ACRES

CURVE TABLE

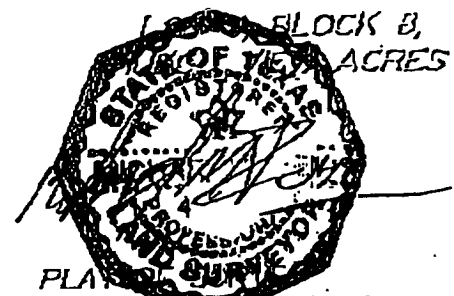
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD DISTANCE
C1	90°33'12"	25.00'	39.51'	25.24'	N44°47'15"E	35.53'
C2	90°33'12"	25.00'	39.51'	25.24'	S44°47'15"W	35.53'

LINE TABLE

LINE	BEARING	LENGTH
L17	N00°29'22"W	30.00'
L18	S00°29'22"E	30.00'

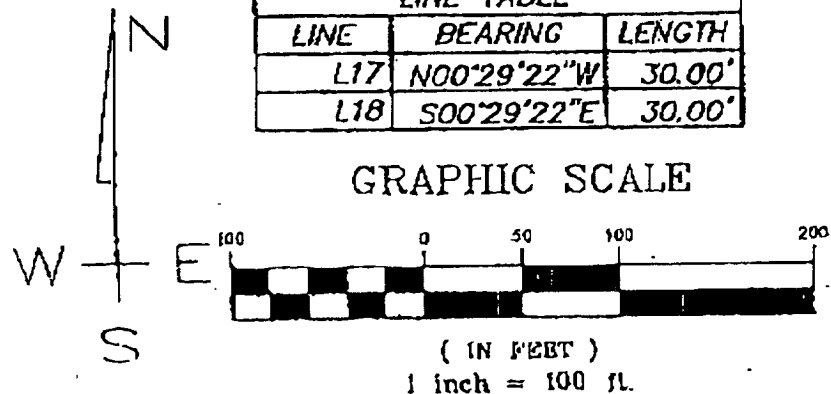
○ - SET 3/8" REBAR WITH PLASTIC CAP

BASIS OF BEARING-OPS OBSERVATIONS
MADE ON CITY MONS. @ EDGEMERE &
RISING STAR AND EDGEMERE AND RISE
ROSE FROM TRI. STA. SHERMAN.



PLAT OF LOT 1, BLOCK 2,
HUECO VIEW ACRES
CITY OF EL PASO
EL PASO COUNTY, TEXAS

GRAPHIC SCALE



FRUIT-ZOLLARS INC.					
FRUIT-ZOLLARS, INC. 5822 CROVO DR./SUITE-210/EL PASO, TEXAS 79912 PH. (915)587-4339 / FAX (915)587-5267					
DRAWN BY	FWH	DATE	07-20-2003		
CHECKED BY	FWH	DATE	01/05/04	Changed to Parcel Eight	FWH
DATE	09-0177-03	DATE	1 of 1	NO.	DATE
				DESCRIPTION	BY